

NATURAL RESOURCES COMMISSION

Meeting Minutes

August 15, 2007

Pursuant to the notice filed with the Town Clerk, the meeting of the Natural Resources Commission was held at 141 Keyes Road, Concord, MA at 7:00 p.m. on Wednesday, August 15, 2007. The following Commissioners were present: Chair, Alexander Easterday; Paul Feshbach-Meriney; Montgomery Lovejoy, Jamie Bemis and Steve Verrill. Delia Kaye, Natural Resources Administrator; and Cynthia Gray, Natural Resources Administrative Assistant, were also present.

M.G.L. CH. 44, s. 53G – Implementing Regulations

Delia Kaye discussed the importance of adopting the Section 53G regulations as it would give the Commission the ability to have large or complex projects reviewed by a third-party consultant at the expense of the Applicant. The use of an outside consultant would be on a project-by-project basis upon a formal vote of the Commission to hire an outside consultant. Mark Howell of the Finance Committee asked the Commission to consider developing criteria that would allow objective assignments of an outside consultant. One potential criterion might be an estimate of staff time for a project. Developing criteria would protect the Town. Montgomery Lovejoy noted that staff should provide guidance for thresholds.

Montgomery Lovejoy moved to adopt the rules for hiring an outside consultant upon a formal vote taken by the Commission on hiring the outside consultant on a per case basis with guidance and thresholds to be provided by DNR staff. Paul Feshbach-Meriney seconded. All so voted

CONTINUANCES:

CONCORD WOLD, LLC – Annursnac Hill Rd & Commerford Rd / ANRAD – DEP File #137-929

The Applicant is seeking confirmation by the Natural Resources Commission of wetland resource areas boundaries on the property

Dave Crossman of B & C Associates attended on behalf of the Applicant. Chuck Katuska, PWS and review consultant for the NRC, also appeared.

Chuck Katuska indicated that there are two vernal pools that have been submitted for certification and those confined areas are subject to the Wetlands Protection Act because they occur within BVWs. Chuck Katuska noted continued concern with Parcel 2000-11 which fronts on Commerford as the wetland flagging on the parcel is logically inconsistent.

Alexander Easterday noted the incomplete delineation of this project and stated that the Applicant must include the Benincasa parcel (#2000-11). David Crossman noted that the NRC had previously approved the wetland line when it issued an Order of Conditions on the Benincasa parcel. The Commission stated that the Benincasa OOC was solely for restoration work for unpermitted alteration to wetland resource areas, and that all resource areas were not looked at on the project site. David Crossman indicated to the Commission that the Benincasa

parcel would no longer be a part of the Applicant's project. Alexander Easterday requested that the Applicant submit a letter indicating withdrawal of the Benincasa parcel and to also supply a revised plan indicating the project change. Montgomery Lovejoy noted that there would still be an issue even if Parcel 2000-11 was withdrawn due to borders and setbacks from adjacent parcels.

Alexander Easterday asked about the flow to the pond on Parcel 2000-11. Dave Crossman noted that the streams do not meet the regulatory definition and groundwater is not taken into consideration. Dave Crossman referenced a project in Shirley with similar questions regarding the discharge of groundwater and its influence on the determination on whether a stream is perennial or intermittent. Chuck Katuska indicated that the stream does not show on any of the submitted plans and the location of Bank should be shown on the Benincasa parcel. Chuck Katuska indicated that the regulations do show points of inconsistency and an alternative would be adjudication.

Margaret Dimock, 79 Commerford Road addressed the Commission and stated that her residence is downstream from the proposed project. Margaret Dimock noted that the previous owner, who had lived at the property for thirty years, stated that the areas in question were perennial. Margaret Dimock also noted the springs that pop up and the flooding of the entire island that had taken place in the past. She offered to submit photographs to the NRC.

Paul McManus of EcoTec requested that the Commission continue the hearing and that the Applicant be required to provide the Commission with revised plans.

Janice Redlich, 5 Wingate Lane, Acton asked the Commission about the discrepancies in the Applicant's filing and how would they be resolved. Paul Feshbach-Meriney indicated that the Commission often resolves the issues while in the field. Alexander Easterday informed the audience that Baptist Brook was perennial and that the tributaries to Baptist Brook are in question.

Arlene Genova, 46 Shore Drive asked if determination of perennial nature was visual. Alexander Easterday noted that the regulations require that the watershed of a stream be one square mile. Delia Kaye added that some smaller watersheds may also be perennial if they meet other criteria as well.

Marc Redlich, 5 Wingate Lane, Acton questioned the Commission about the possibility of the Applicant reintroducing Parcel 2000-11 at a later time as he believes this parcel is one of the means of egress. Alexander Easterday noted that the Applicant would have to submit a new Notice of Intent but that it would revert back to the same questions that are being addressed currently.

Doris Cole, 593 Annursnac Hill Road, asked if the Commission would be considering plants, trees, soil stability, and hazardous materials with regard to a decision. Delia Kaye noted that determinations of wetlands involved an assessment of plants and soils, and that stability of these would be studied under a Notice of Intent filing for any proposed work. She noted that Natural

Heritage protects rare plants and wildlife and that the NRC is not responsible for regulating these matters.

Arlene Genova, 46 Shore Drive asked about the perennial stream. Delia Kaye noted that a perennial stream flows year round.

This hearing is continued to September 5, 2007.

NEW APPLICATIONS

THE COMMERFORD REALTY TRUST – 140 Commerford Road and 14B Commerford Road / **ANRAD** - Seeking confirmation of the wetland resource area boundaries on the property, **DEP File #137-*****

The Applicant is seeking confirmation of the wetland resource area boundaries on the property from the Natural Resources Commission.

Dave Crossman of B & C Associates appeared on behalf of the Applicant. Dave Crossman indicated that this parcel was not included with the Concord Wold LLC Notice of Intent filing. Alexander Easterday noted that the Applicant referenced DEP File No. 137-929 and that if a file was referenced, it should be provided with the application for Commission review.. Alexander Easterday also stated that the terms “confirmed” and “determined” shown on the plans were very preliminary because DEP File No. 137-929 was currently under Commission review. Alexander Easterday also questioned whether the appropriate fee was submitted with the ANRAD. Dave Crossman indicated that the Commission would need to inquire same with Rich Harrington of Stamski & McNary. Delia Kaye indicated that because this was likely to be a controversial project, the services of an outside consultant would be prudent. Jamie Bemis noted the administrative issues regarding M.G.L. Ch. 44, s. 53G – Implementing Regulations, and Delia Kaye suggested that while the NRC not require the Applicant to pay for an outside consultant, that Dave Crossman request this of the Applicant.

Andrew Coughman, President of the Annursnac Hill Association requested that Paul McManus of EcoTec be present at the site walk. Alexander Easterday explained that the decision was up to the landowner. Mark Howell, 668 Annursnac Hill Road noted that this parcel abuts the previous filing (Concord Wold LLC, DEP File No. 137-929). Janice Redlich, 5 Wingate Lane, Acton asked if there were any other parcels available. Arlene Connolly, 60 Commerford Lane expressed concern about whether the Applicants were in fact separate companies or if there was the possibility of a merger of the parties.

A Commission site walk was scheduled for Thursday, August 23, 2007 at 3:30 p.m.

This hearing is continued to September 5, 2007.

GENOVA/MAXEY – 46 Shore Drive / **Abbreviated NOI, DEP File #137-*****

This project involves constructing a shed, placement of two tool sheds, and after-the-fact installation of a fence within 100 feet of Bordering Vegetated Wetlands of White Pond.

Applicant, Arlene Genova appeared. She and her husband have owned the property for 23 years. The Applicants have received approval from the White Pond Advisory Committee and will be going before the Zoning Board of Appeals to request waivers from the property line setbacks.

Paul Feshbach-Meriney indicated that the plan did not appear to match what is in the field. Alexander Easterday requested that the Applicant accurately depict where the fence was installed, including the distance from the wetland flags. Sketch revisions are acceptable. Arlene Genova indicated that no heavy equipment would be used, and that only minor digging (by hand) would be required to install the sona tubes. All stumps would be left in place to ensure stability of the slope.

This hearing is continued to September 5, 2007.

EARLEY – 177 Monsen Road / NOI, DEP File #137-942

This project involves demolition of an existing structure and constructing a new single-family dwelling including a new septic system within 100 feet of Bordering Vegetated Wetlands and within Estimated Habitat of Rare Wetlands Wildlife.

Markus Pinney of Land Use & Environmental Consultant appeared with Architect, Hank Reisen of Reisen Design Associates and Applicant, Lisa Earley.

Markus Pinney indicated that this property is just to the left of the access to Great Meadows. The premises are a natural area adjacent to an intermittent stream. Markus Pinney noted that the goal of the Applicant was to utilize the existing footprint for construction of the new single-family dwelling. Very little grading would take place. Improvements would include native plantings.

Alexander Easterday requested that the Applicant supply documentation for intermittent stream status because it was flowing during the staff site visit. He also noted that the stockade fence is shown on Town property. Alexander Easterday requested that the Applicant take down the connecting fence and move it back on to the Applicants' property and to raise it off the ground six inches to provide adequate wildlife passage. Markus Pinney stated that the Applicant should be receiving Board of Health approval within the next ten days. Delia Kaye requested that the relocation of the shed and the existing leaching field should be shown on the plan.

This hearing is continued to September 5, 2007.

BEMIS – 21 Liberty Street / NOI, DEP File #137-943

This project involves replacing a drain pipe within 100 feet of Bordering Vegetated Wetlands and Estimated Habitat of Rare Wetlands Wildlife.

Jamie Bemis recused herself. Bill McNary of Stamski and McNary appeared together with the Applicant, Jamie Bemis. Bill McNary submitted revised plans at this hearing showing driveway reconstruction instead of resurfacing. The Applicant desires to replace the existing culvert and reconstruct the driveway. The driveway is 10 to 11 feet wide and there is no proposed increase in driveway width. A new 10-inch PVC pipe would connect to the existing pipe and flow to an existing overflow ditch near Liberty Street.

Paul Feshbach-Meriney asked about the depth of the excavation process and was it above the groundwater table. Bill McNary indicated that the depth of excavation would be 3-3 ½ feet, the pipe would be replaced during the no flow period and that they would maintain the 6-inch depth of gravel.

Woodrow Vandever, 320 Lowell Road asked about the drainage and would the water exit at the same location.

This hearing is continued to September 5, 2007 at which time the Commission expects to close the hearing and issue a an Order of Conditions..

LITWACK – 1575 Monument Street / RDA #07-13

This project involves installing a new septic system for a single-family dwelling located within 100 feet of Bordering Vegetated Wetlands.

Dick Dolan of ABC Cesspool appeared on behalf of the Applicant. The intent is to replace the failed septic system located in the front of the house with a proposed system behind the house. The area is fairly flat and there would be no tree removal. Alexander Easterday asked about construction access.

Paul Feshbach-Meriney moved to issue a Negative #3 Determination with a Special Condition of a preconstruction site visit. Steve Verrill seconded. All so voted.

JONES – 39 Musketaquid Road / NOI, DEP File #137-944

This project involves constructing an addition to an existing single-family dwelling and site improvements consisting of constructing a patio, planting beds, walkways, retaining wall and invasive species control, and locating a seasonal floating dock within 100 feet of Bordering Vegetated Wetlands, 200-foot Riverfront Area of the Sudbury River and Estimated Habitat of Rare Wildlife.

Greg Roy of Ducharme & Dillis Civil Design Group appeared together with the Applicant. This property abuts the Sudbury River. It is the Applicant's intent to enhance the area with native landscaping. The construction of a floating dock is also proposed as part of this project.

Alexander Easterday asked how the dock would be connected to land. Greg Roy submitted a letter to the Commission together with revised plans at the hearing. Revised plans also show a revised MAHW line. Greg Roy suggested that the dock be attached with two post anchored on land and two posts anchored in the water. The land posts would stay in when the seasonal dock would be removed. The posts would be installed using a sledge hammer. This project would need the approval of the Army Corps of Engineers because it is located within a Wild and Scenic River. It is the Applicant's intent to save the 50-inch beech tree near the driveway and to obtain the opinion of a qualified Arborist. Alexander Easterday requested that the landscape architect submit a planting plan for review and approval of the DNR. Mamie Wytrwal of Harvard will be the landscape architect. Jamie Bemis asked for clarification on the dates of the dock being in the water. Applicant, George Jones indicated a timeframe of approximately April to November.

Delia Kaye noted that staff would look at what time period has been approved by the Commission in the past. Delia Kaye noted that the dock would be located partially within BVW and partially within LUW, and that the Applicant would need to submit a revised page 3 of the NOI to show the impact numbers to the appropriate resource areas. The impacts would be considered temporary.

This hearing is continued to September 5, 2007 at which time the Commission expects to close the hearing and issue a permit contingent upon comments from Natural Heritage.

TAYLOR – 62 Elm Street / RDA #07-14

This project involves after-the-fact replacement of a timber wall and regrading within the 200-foot Riverfront Area of the Sudbury River, 100-foot Buffer Zone to Bordering Vegetated Wetlands, Bordering Land Subject to Flooding and Estimated Habitat of Rare Wildlife.

The Applicant, Jeff Taylor, appeared together with real estate broker Victoria Dowdy and soon to be new owners, Doug and Aviva Brooks.

Jeff Taylor is the financial partner of Doug White, the builder of the property, who passed away recently. Jeff Taylor noted the intent was to clean up the back yard, replace the retaining wall and reclaim the 40-year old gardens. He wished to clear the overgrown weeds at the back of the house with no disturbance to wetlands and no fill brought in. Three pallets of old brick would be removed as they are currently stacked on the side yard. Jeff Taylor was proposing a 5-foot high retaining wall but the new owners are requesting a 3-foot high retaining wall with stairs to be installed to the left of the retaining wall.

Alexander Easterday asked where the Riverfront Area ended. Proposed alterations needed to be shown on the plan and all basic information needed to be shown on the site plan. Applicant would need to retain the services of an engineer to do a formal site plan which needs to be submitted to DNR staff for review. Once resource areas were shown on a plan relative to the proposed work, DNR staff could offer guidance on whether a RDA would be sufficient or if a NOI would be needed.

Jeff Taylor indicated that he took over this project with good intentions and also noted that the property was under a Purchase & Sale Agreement with an anticipated closing date of September 24, 2007.

This hearing is continued to September 5, 2007.

NASHAWTUC COUNTRY CLUB – 1861 Sudbury Road, DEP File #137-893

This project involves the demolition of an existing building and reconstruction of a new maintenance building.

Jeff Brem of Meisner Brem Corporation attended together with Mike Toohill of ENSR, and Paul Miller and Jake Williams, both of Nashawtuc Country Club.

Jeff Brem updated the Commission on the status of this project. All work except removal of the pump facility across the road has been completed and as-built drawings submitted. The pump is actually a part of the building. In order for the Applicant to obtain a Certificate of Occupancy from the Building Department, this project would need a Certificate of Compliance issued by the Commission.

Special Condition #20 of the Order of Conditions states that before a Certificate of Compliance can be issued, the Applicant must apply for and receive an Order of Conditions to remove the existing pump facility and associated structures.

The Commission will consider issuing a Partial COC for the work completed. After a favorable site visit, DNR staff will submit a letter to John Minty indicating that the Commission intends to issue a Partial COC at their next meeting.

This hearing is continued to September 5, 2007.

ISSUE DUPLICATE ORDER OF CONDITIONS:

FELDBERG – 75 Buttricks Hill Road, DEP File #137-339

Montgomery Lovejoy moved to issue a Duplicate Order of Conditions. Steve Verrill seconded. All so voted.

CLOSE HEARINGS/ISSUE PERMITS

MIDDLESEX SCHOOL – 1400 Lowell Road, DEP File #137-941

Montgomery Lovejoy moved to close the hearing. Steve Verrill seconded. All so voted.

Montgomery Lovejoy moved to issue a standard Order of Conditions with Special Conditions 18-44. Paul Feshbach-Meriney seconded. All so voted.

THOREAU SCHOOL – 29 Prairie Street - DEP File #137-933

Paul Feshbach-Meriney moved to close the hearing. Steve Verrill seconded. All so voted. Paul Feshbach-Meriney moved to approve Findings A-C. Jamie Bemis seconded. All so voted. Paul Feshbach-Meriney moved to issue a standard Order of Conditions with Special Conditions 18-44. Jamie Bemis seconded. All so voted.

CERTIFICATES OF COMPLIANCE:

ARENA (former owner ADAMS BUILDERS) – 167 Fairhaven Road – DEP File #137-542

Nat Arena submitted correspondence today to DNR staff for review with the Commission at this hearing. After discussion, the Commission concluded that DNR staff would forward correspondence to Nat Arena outlining what was required for a Certificate of Compliance, including as-built plans.

OTHER BUSINESS

Approve July 11, 2007 Meeting Minutes

Paul Feshbach-Meriney moved to approve the minutes as amended. Steve Verrill seconded. All so voted.

Approve July 25, 2007 Meeting Minutes

Steve Verrill moved to approve the minutes as amended. Paul Feshbach-Meriney seconded. All so voted.

Violations – 77 Westford Road and 17 White Avenue

Division of Natural Resources expects Notice of Intent Applications on both properties.

Commission Member Status

This is Paul Feshbach-Meriney's last meeting as a Commissioner. Paul Feshbach-Meriney will send a formal resignation letter to Chris Whelan. Al Easterday will send an email to Chris requesting that George Lewis be approved as a Commissioner.

Land Acquisition - Town and CLCT Joint Partnership

The Board of Selectman will vote on August 20, 2007 on the Town's right of first refusal regarding the offer to purchase 167 Fairhaven Road, Concord (Arena Farms). After discussion, Steve Verrill moved that the NRC recommend to the Board of Selectman that the Town not exercise its right of first refusal. Montgomery Lovejoy seconded. All so voted.

Steve Verrill will go attend the Board of Selectmen meeting on August 20, 2007 to answer questions and provide insight to the NRC's position.

The meeting adjourned at 11:15 p.m.

Respectfully submitted,

Delia R. J. Kaye, Natural Resources Administrator

Cynthia L. Gray, Natural Resources Administrative Assistant